BRTRC Cover Sheet

Docket Number

A-30941

665-D

UNITED STATES

v.

OWEN O. ROBERTS ET AL.

OCT 15 1968

A-30941 Decided

Mining Claims: Discovery

Mining claims located for a deposit of a common variety of decomposed granite are properly held to be invalid where the claimants fail to show by preponderant evidence that the material could have been marketed at a profit prior to July 23, 1955.

Mining Claims: Common Varieties of Minerals

A large deposit of decomposed granite is properly held to be a common variety of stone where there is positive testimony that it is of poor quality unsuitable for road construction, except possibly as sub-base, and occurs extensively in a wide area and the only exceptional properties asserted for it are that it will carry heavy weight and drain well.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

A-30941

: Sacramento Contests Nos.
: 080149 C-1 and C-3

United States
v.
Owen O. Roberts et al.

: Placer mining claims held null
: and void

: Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Owen O. Roberts has appealed to the Secretary of the Interior from a decision dated November 17, 1967, by the Office of Appeals and Hearings, Bureau of Land Management, which affirmed a decision by a hearing examiner declaring the Owensville Nos. 1, 3, 4, 5, 6, 7, 8, and 10 placer mining claims to be null and void for lack of discovery of a valuable mineral deposit.

Before considering the merits of the case we note some confusion in the proceedings. The case originated with two contest complaints dated January 28, 1966. Contest Sacramento 080149 C-1 was directed against the Owensville No. 1 lode mining claim and named "David Owens Roberts, also known as David O. Roberts" as the sole contestee. Contest Sacramento 080149 C-3 was directed against the Owensville No. 3 claim and the Owensville Nos. 4, 5, 6, 7, 8, and 10 placer mining claims and named eight contestees, including David O. Roberts and Owen O. Roberts. An answer to the second contest was filed by Owen O. Roberts on the letterhead of the Owensville Mining Association which listed Owen O. Roberts as president. A copy of the same answer, also signed by David O. Roberts, was submitted by the latter as an answer to the first contest.

At the hearing Owen O. Roberts testified that he and David O. Roberts were the only two holding interests in the claims, that he acquired by quitclaim deed the interests of the other six contestees (Tr. 10-14). He also testified that the No. 1 lode claim had been amended as a placer claim (Tr. 16). Presumably this was done by the amended notice of location referred to in the complaint.

Following the hearing examiner's decision of June 29, 1967, holding the claims to be null and void, Owen O. Roberts and David O. Roberts signed the appeal to the Director, Bureau of Land Management, which was submitted on the letterhead of the Owensville Mining Association. However, after the decision of the Office of Appeals and Hearings, Owen O.

Roberts alone signed the notice of appeal, also on the Association's stationery. But the statement of reasons, again on the Association's stationery, was signed by Owen O. Roberts as president of the Owensville Mining Association.

Although a basis exists for concluding that David O. Roberts is not a party to the present appeal, we will construe Owen O. Roberts' actions as being also on his behalf. We will also consider that the validity of the eight placer claims is properly at issue since no one has claimed any life for the No. 1 lode claim.

As indicated earlier, the validity of the claims was challenged on the principal ground that the "existence of a deposit of valuable mineral of sufficient quantity to constitute a valid discovery is not disclosed" within the limits of the claims. Although at times appellants have seemed to claim values in uranium and other minerals, their claim of validity is basically bottomed upon a discovery of a valuable deposit of decomposed granite which is found on all the claims.1/

George W. Nielsen, a mining engineer, testified for the contestant that the decomposed granite is not used for any commercial purpose in the area, that he interviewed the State highway division and also the county road department, that they have used it for sanding icy highways but it is not suitable construction material for road purposes because it is hydrophilic and has a very weak crystalline structure, that the county has occasionally found it suitable as a sub-base but not as a base material, and that it is not written into specifications for highway construction any more. Nielsen also testified that the material is very widespread, that he has traced the formation in a north-south direction for about 30 miles and it extends back to the west in places for almost 20 miles. (Tr. 33-34.)

Owen O. Roberts testified that there were "vast quantities" of decomposed granite on the claims but denied that the widespread material in the area testified to by Nielsen was decomposed granite (Tr. 54-55). He said his material was valuable because the county negotiated for it and discussed a price of 10 cents per cubic yard. He also said that the fact that the material could have been marketed was borne out by the fact that the county had trespassed on the claims and used vast quantities for road construction. (Tr. 55.) Roberts claimed as special qualifications for the decomposed granite its ability

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1/ Assays of 11 samples taken jointly by two mining engineers for the contestant and Owen O. Roberts showed no values in uranium and insignificant or no values for other minerals tested (Ex. 11). A miscellany of assay and other reports submitted by appellants showed some high values in gold and varying values in numerous other minerals (Ex. A), but this evidence is worthless because it was not accompanied by any testimony or showing as to where the samples were taken or how they were taken (Tr. 65).

Since appellants have failed to show by a preponderance of evidence that the decomposed granite is an uncommon variety of stone and that the material, as a common variety, was marketable at a profit as of July 23, 1955, their claims were properly held to be invalid for lack of discovery.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (210 DM 2.2A(4)(a); 24 F.R. 1348), the decision appealed from is affirmed.

Ernest F. Hom
Assistant Solicitor
Land Appeals

to support weight and its excellent drainage property (Tr. 58-59).

Although it appears that the notice of location of the claims were recorded on September 19, 1955, Roberts asserted that the claims were in fact located about a month prior to the enactment of the act of July 23, 1955, 30 U.S.C. § 601 et seq. (1964). Section 3 of that act, 30 U.S.C. § 611 (1964), excluded thereafter from mining location deposits of common varieties of sand, stone, gravel, etc. except deposits having some property giving them distinct and special value. If the decomposed granite is a common variety of stone, it is necessary to show that a discovery was made on the claims prior to July 23, 1955. If it is an uncommon variety of stone, then the date of discovery could have been after July 23, 1955. In either event, however, a discovery is essential to validity of the claims.

What constitutes a discovery? It is the finding of a mineral deposit of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894). As a part of that test, it is incumbent upon the mining claimant to show by a preponderance of credible evidence that the minerals can be extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968); Converse v. Udall, ___ F.2d ___ (No. 21,697, 9th Cir., August 19, 1968); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1958).

Have the appellants sustained that burden? We think not. It is conceded that no decomposed granite from the claims has been sold at any time, before or after July 23, 1955. Appellants' only evidence of marketability is Owen O. Roberts' testimony that the county negotiated with appellants about the purchase of material at 10 cents per yard. He gave no details as to time, quantities, etc. On the other hand, Neilsen testified that the county found the material suitable only as sub-base, a very low grade of use.

As to whether the decomposed granite is a common variety of stone, appellants again have not shown by a preponderance of evidence that it has any special properties giving it a distinct and special value. It appears to be a very ordinary material; appellants themselves said there are vast quantities of it on the claims, which comprise 1160 acres. As a common variety its marketability was required to be shown as of July 23, 1955, a month after location of the claims. There is no probative evidence of this at all.

Even if we were to assume that the decomposed granite is an uncommon variety of stone, the claims must fall because the appellants have not shown that the material is marketable at a profit at the present time. Vague hopes that a market may develop in the uncertain future is far from sufficient. Foster v. Seaton, supra.